



December 23, 2014

## CASE NUMBER 2679

**Plaintiff:** Cargill, Incorporated, Minneapolis, MN

**Defendant:** Searcy Farms, Inc., Danville, IN

### STATEMENT OF THE CASE

This case concerned whether Searcy Farms, Inc. (“Searcy Farms”) breached six grain sale contracts, for a collective total of 55,000 bushels of U.S. No. 2 Yellow Corn and 24,000 bushels of U.S. No. 1 Yellow Soybeans, with delivery periods between Oct. 1 and Nov. 30, 2012, by failing to deliver the grain to Cargill, Incorporated (“Cargill”). Each of these contracts was signed by Searcy Farms. This case also concerned whether Cargill had the right to cancel the contracts rather than agree to the extensions of the delivery periods requested by Searcy Farms.

After learning that Searcy Farms likely would not meet its delivery obligations set to begin under the contracts in October 2012, Cargill assessed equity shortfalls it claimed were due for the soybean contracts on Oct. 1 and for the corn contracts on Oct. 2. Cargill then followed up with letters to Searcy Farms requesting “Adequate Assurance” of delivery for the soybean contracts on Oct. 2, and for the corn contracts on Oct. 4. In these letters, Cargill also asserted that it had the right to cancel each contract at the listed market price.

Searcy Farms responded to Cargill’s correspondence by letters on Oct. 8 and Oct. 10, 2012, requesting that the contracts be altered to allow for an extension of time for delivery with reference to NGFA Grain Trade Rule 28. In its letters, Searcy Farms stated it was “not repudiating the contract, nor is he voluntarily failing to perform.” Searcy Farms further specifically stated its intent to “work with Cargill” on the open contracts.

On Oct. 16, 2012, Cargill replied by letter that it was electing to cancel each of the contracts at the then current, re-calculated market prices, in accordance with NGFA Grain Trade Rule 28 A(3). Cargill’s letter also stated that unless the invoices totaling \$125,511.41 were paid, it would seek arbitration of this dispute through NGFA as provided in the contracts.

The parties continued to communicate by telephone and e-mail until Dec. 21, 2012, when Searcy Farms offered to pay Cargill \$25,000 for a complete release of the disputed matters. Cargill refused the offer, and on March 11, 2013, Cargill filed for arbitration with NGFA.

### THE DECISION

The arbitrators closely reviewed the facts, evidence and arguments presented in this case by the parties and addressed the various issues raised as follows:

- Searcy Farms argued it had the right to an extension of the delivery periods under the contracts. Both parties referred to NGFA Grain Trade Rule 28 on this issue. NGFA Grain Trade Rule 28 [Failure to Perform] states in paragraph (A) [Seller's Non-Performance] as follows:

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then, at once elect either to: (1) agree with the Seller upon an extension of the contract; or (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer by the exercise of due diligence, can determine whether the Seller has defaulted. In such case, it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to: (1) agree with the Seller upon an extension of the contract; or (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

The rule clearly provides that following Searcy Farms' failure to perform under the delivery periods in the contracts, Cargill had the option to extend the delivery periods by mutual agreement with Searcy Farms. However, neither party had the right to unilaterally extend the delivery periods. Cargill had the option under the rule to *either* agree to extend the delivery periods *or* to cancel the contracts, but not an obligation specific to either option. The arbitrators concluded that Cargill properly exercised its right to cancel the contracts at market price under the rule and the terms of the contracts.

- Searcy Farms argued that application and enforceability of certain contracts in this case were limited because the documentation and communications between the parties interchangeably referred to "Searcy Farms" or "Searcy Farms Inc." or were signed by or addressed to "Dan Searcy," "J. Daniel Searcy" and "Jason Searcy." In particular, Searcy Farms claimed that "J. Daniel Searcy d/b/a Searcy Farms" was not a party to this proceeding.

Based upon review of the documents in this case and the longstanding relationship between the parties, the arbitrators determined that each of the contracts submitted in this case were properly a part of this proceeding. In particular, J. Daniel Searcy had executed multiple contracts for Searcy Farms and Searcy Farms Inc. interchangeably. Cargill had no reason to be aware of the existence of potentially separate entities nor did it have a basis to question whether the named individuals signing contracts on behalf of Searcy Farms had the authority that they reasonably appeared and claimed to have.

- Searcy Farms submitted various additional arguments challenging the contracts, including allegations that the contracts were "unconscionable" or "adhesion contracts." Searcy Farms claimed that inconsistent aflatoxin sampling and shortened hours of delivery imposed by Cargill impeded Searcy Farms' ability to fulfill the contracts. Searcy Farms also stated that Cargill should be required to amend and resubmit its claims on the theory that they were legally deficient.

The arbitrators denied these claims by Searcy Farms. The contracts in this dispute followed the general customs of the trade as well as prior practice between these same parties, including many other contracts between Searcy Farms and Cargill that were successfully completed. The arbitrators concluded that

deliveries by Searcy Farms were not unduly hampered and were clearly provided for in the contractual language regarding quality specifications and timing of deliveries. The arbitrators decided that contract integrity was maintained in the course of dealings between the parties relevant to this dispute and a clear claim upon which relief can be granted to Cargill existed. Searcy Farms did indeed breach each signed contract by failing to deliver the grain. Further, the arbitrators determined that NGFA had sole jurisdiction to resolve the disputes in this matter, as provided and agreed upon by both parties in the contracts, which were each signed by Searcy Farms.

Searcy Farms submitted a counter-claim arguing that in September of 2012, it delivered two loads of corn to Cargill for which it had not been paid. In the course of these proceedings, Cargill recognized Searcy Farms' counterclaim for payment totaling \$7,717.27, and Cargill reduced its original claim for damages by that offset to the new total amount of \$116,764.14.

### THE AWARD

The arbitrators awarded \$116,764.14 to Cargill, Incorporated. The arbitrators also awarded interest at the rate of 3.25 percent per annum from the date of this decision pursuant to NGFA Arbitration Rules 8(m). No attorney fees were awarded.

Decided: October 16, 2014

Submitted with the unanimous consent of the arbitrators, whose names appear below:

**Randy Ward**, *Chair*  
Merchandising Manager  
Pendleton Grain Growers  
Pendleton, OR

**Steven D. Burbrink**  
Director of Business Development  
CGB Enterprises Inc.  
Mandeville, LA

**Philip Farrell**  
Grain Division Manager  
Elburn Cooperative Co.  
Sycamore, IL